

## Message Text

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PAGE 01 STATE 010837

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DRAFTED BY L:MBFELDMAN:LHS

APPROVED BY EB/IFD:PBOEKER

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E.O. 11652: N/A

TAGS: EINV, EFIN, OECD

SUBJECT: CIME DRAFTING GROUP: GUIDELINES FOR MNE'S

1. AT RECENT MEETING OF THE DRAFTING GROUP USDEL PROMISED SECRETARIAT TO PROVIDE FURTHER INDICATION OF US POSITION ON CERTAIN PARAGRAPHS OF THE NATIONAL TREATMENT INSTRUMENT SO THAT THESE VIEWS COULD BE REFLECTED IN THE DOCUMENTATION BEING PREPARED BY THE SECRETARIAT FOR THE NEXT MEETING OF THE FULL COMMITTEE. ACCORDINGLY, WE REQUEST THAT YOU ADVISE VOGELAAR AS FOLLOWS:

IN ORDER TO FACILITATE RAPID COMPLETION OF THE NATIONAL TREATMENT INSTRUMENT, THE US WOULD AGREE TO THE DELETION OF BOTH PARAGRAPHS 4 AND 5 OF THE US TEXT OF JANUARY 2 DEALING WITH INTERNATIONAL AGREEMENTS AND NON-DISCRIMINATION RESPECTIVELY. WE BASE THESE DELETIONS ON THE CONCEPT,  
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PAGE 02 STATE 010837

APPROVED IN THE DRAFTING GROUP, THAT THE NEW APPROACH TO

THE NATIONAL TREATMENT INSTRUMENT IS TO COMBINE A BROAD AND UNQUALIFIED DECLARATION OF THE PRINCIPLE OF NATIONAL TREATMENT WITH A LEGALLY BINDING DECISION WHICH IS LIMITED ENTIRELY TO PROCEDURAL MATTERS. THUS, THE INSTRUMENT ITSELF DOES NOT AUTHORIZE ANY EXCEPTIONS FROM THE NATIONAL TREATMENT PRINCIPLE. WE WOULD LIKE THE SECRETARIAT NOTE

ACCOMPANYING THE NEW TEXT TO MAKE THESE POINTS A MATTER OF RECORD. IN RESPONSE TO THIS US CONTRIBUTION TO SIMPLIFY THE INSTRUMENT AND SHORTEN OUR DISCUSSIONS, WE WOULD ASK FOR A SLIGHT REVISION OF THE NEW PARAGRAPH 2 OF THE INSTRUMENT TO READ: QUOTE. THIS INSTRUMENT SHALL NOT AFFECT THE RIGHT OF MEMBER COUNTRIES TO REGULATE, CONSISTENT WITH THEIR INTERNATIONAL OBLIGATIONS, THE ENTRY OF FOREIGN INVESTMENT OR THE CONDITIONS OF ESTABLISHMENT OF FOREIGN ENTERPRISES. UNQUOTE. ALTERNATIVELY, IF THIS SHOULD NOT BE ACCEPTABLE TO OTHER DELEGATIONS, THE PARAGRAPH COULD READ "THIS INSTRUMENT DOES NOT DEAL WITH THE RIGHT OF MEMBER COUNTRIES TO REGULATE, ETC." NATURALLY, WE ASSUME THAT THE DELETION OF PARAGRAPHS 4 AND 5 WOULD OBVIATE ANY NEED TO CONSIDER A SPECIAL CLAUSE FOR THE EUROPEAN COMMUNITY.

2. YOU SHOULD ALSO ADVISE VOGELAAR THAT WE HAVE REFLECTED FURTHER ON THE GREEK PROPOSAL CONCERNING TRANSFER PRICING. WE BELIEVE IT WOULD BE VERY DIFFICULT TO DEAL WITH THE PROBLEM OTHER THAN AS A TAX MATTER AND COULD NOT SUPPORT A REFERENCE TO TRANSFER PRICING IN THE FINANCING PROVISION OR ANY NEW PARAGRAPH ALONG THE LINES CONTEMPLATED BY THE GREEKS. KISSINGER

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